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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In re)
)
CHAMELEON RADIO CORPORATION) MM Docket No. 96-173
)
Order To Show Cause Why the License)
for Station KFCC(AM), Bay City, Texas,)
Should Not Be Revoked)
)
Request for Extension of Special)
Temporary Authority)

To: The Commission

MASS MEDIA BUREAU'S REPLY TO EXCEPTIONS

Respectfully submitted,
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November 19, 1997

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SUMMARY

The Initial Decision correctly concluded that Chameleon Radio Corporation ("Chameleon") is unfit to be a Commission licensee and that revocation of Chameleon's license for KFCC(AM), Bay City, Texas, is mandated. The Presiding Judge properly excluded evidence regarding Chameleon's "unique" programming service because this evidence is irrelevant to the issues designated to determine whether Chameleon misrepresented facts and lacked candor to the Commission with respect to its STA request. In addition, Chameleon's claim that it demonstrated good faith in its dealings with Commission staff during the course of events in this case is belied by the record.

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MASS MEDIA BUREAU'S REPLY TO EXCEPTIONS

Preliminary Statement

1. The Mass Media Bureau, pursuant to Sections 1.276 and 1.277 of the Commission's Rules, hereby replies to the exceptions to the Initial Decision of Administrative Law Judge Joseph Chachkin, FCC 97D-11, released September 18, 1997 ("Initial Decision" or "ID") filed by Chameleon Radio Corporation ("Chameleon") on November 4, 1997. The failure of the Bureau to comment on any particular exception or argument should not be construed as a concession on the Bureau's part as to the correctness or accuracy of that exception or argument.

Counterstatement of the Case

2. The Initial Decision correctly concluded that Chameleon is unfit to be a Commission licensee and that revocation of the license of Chameleon for KFCC(AM), Bay City, Texas, is mandated. This conclusion was based on record evidence which overwhelmingly demonstrated that Chameleon willfully misrepresented facts and lacked candor to the Commission regarding the status of its licensed broadcast facility at Bay City when requesting Special Temporary Authority ("STA") on April 21, 1995, and lacked candor in its May 2, 1995, amendment to that STA request regarding the construction of a tower. The Initial Decision also found that rather than being candid with the Commission in response to Commission inquiries regarding the STA request, Chameleon "engaged in a deliberate pattern of outright falsehoods, evasiveness, and deception," a pattern which continued even at the hearing stage. ID at para. 38. Finally, the Initial Decision concluded that Chameleon

"can not be trusted" and that "there is nothing in the record to indicate that Chameleon understands or can be expected to meet the burden of licensees to be forthcoming in their dealings with the Commission and to comply with its rules and policies." ID at para. 38.

Questions Presented

Whether the Presiding Judge should have considered the unique programming service provided by Chameleon?

Whether Chameleon demonstrated good faith in its dealings with Commission staff during the course of events in this case?

Argument

The Presiding Judge properly excluded evidence regarding the unique programming service provided by Chameleon.

3. At hearing, Chameleon sought to introduce evidence regarding the foreign-language and other "unique" programming which had previously aired on KENR(AM), Houston, Texas, and which Chameleon intended to air on KFCC. (Chameleon Ex. 1, paras. 46-51 and Apps. 25-27). The Presiding Judge excluded this programming evidence, concluding that it is irrelevant to the designated issues. Tr. 55-56. Although at paras. 5-11 Chameleon excepts to the exclusion of this evidence, it has not even attempted to show how evidence of the programming which it intended to air on KFCC is relevant to a determination of whether Chameleon misrepresented facts and lacked candor to the Commission regarding the STA request. Moreover, precedent indicates that programming does not mitigate serious deliberate misconduct such as misrepresentation. See KQED, Inc., 5 FCC Rcd 1784, 1785 (1990). Accordingly, the Presiding Judge properly rejected the programming evidence proffered by Chameleon.

Chameleon did not demonstrate good faith in its dealings with Commission staff during the course of events of this case.

4. Chameleon's claim at para. 12 that it demonstrated good faith in its dealings with Commission staff during the course of this case is belied by the record. In the STA request filed on April 21, 1995, Chameleon willfully misrepresented that its authorized transmitter site in Bay City had been lost with the intent to deceive the Commission and cause it to issue the STA. ID at paras. 29-31. In addition, in the May 2, 1995, amendment to the STA request, Chameleon willfully lacked candor with the Commission in asserting that the proposed tower was an "existing" tower. ID at paras. 32-33. While Chameleon submits in its exceptions that "[b]ad actors do not present themselves in person not once, but five times before Commission staff to plead their case and ask for help," Chameleon's efforts after the filing of the STA request and amendment are irrelevant to a determination of whether it misrepresented facts and lacked candor when it filed the STA request and amendment. In any event, the record clearly establishes that Chameleon was not candid about the "loss" of its Bay City site or about its involvement in the construction of a new tower during its meetings with Commission staff or in its responses to Commission inquiries. ID at paras. 31 and 34. In fact, it was not until the hearing that Chameleon finally admitted that it voluntarily abandoned the Bay City site because it intended to move KFCC to a Houston area site in order to continue its program service. ID at para. 31. Similarly, the extent of Chameleon's role in the construction of a new tower was not fully disclosed until the hearing. ID at para. 34.

5. Chameleon's arguments at paras. 13-18 concerning Commission staffers John Vu and James Burtle and the Bureau's STA policies are simply another attempt to shift the blame for Chameleon's misconduct to the Commission staff. Chameleon has provided no evidence whatsoever to support its contention that Vu and Burtle were "purposefully adverse" to Chameleon. Moreover, the Bureau's STA policies are not in issue in this proceeding. Regardless of whether Chameleon agreed with Vu's explanation of the Commission policy on new tower construction for STAs, Chameleon clearly understood that an STA would not be granted for the Harris County site if new tower construction was involved. Chameleon nevertheless proceeded to construct a new tower at the Harris County site and then falsely claimed in the amendment to its STA request that it was an existing tower. Chameleon did not disclose its instrumental role in the construction of the tower in the amendment to its STA request because it knew that the STA request would not be granted if the true facts behind the tower construction were revealed. ID at para. 33.

6. Regarding Chameleon's assertion at para. 19 that its principal, Michael Don Werlinger, had a "long and unblemished record" before the Commission prior to May 1995, consideration of Werlinger's past broadcast record is not appropriate here. Misrepresentation and lack of candor are serious breaches of trust undermining the integrity of the Commission's processes. See Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1208-1211 (1986), recon. denied, 1 FCC Rcd 421 (1986) [subsequent history omitted]. A meritorious past broadcast record cannot mitigate a licensee's misrepresentation or lack of candor. See Center for Study and Application of Black

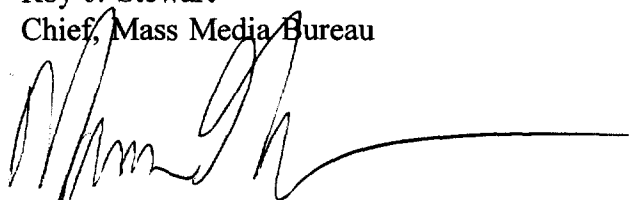
Economic Development, 10 FCC Rcd 2836, 2840 (Rev. Bd. 1995), recon. denied, 10 FCC Rcd 6069 (Rev. Bd. 1995), rev. denied, 11 FCC Rcd 1144 (1996).

7. Finally, Chameleon provides no support for its suggestion at para. 21 that a \$50,000 forfeiture and a written assurance that it will strictly comply with all Commission directives, rules and regulations regarding the operation of KFCC would be more appropriate sanctions for its misconduct than revocation of the license for KFCC. The Initial Decision found that Chameleon "can not be trusted" and that "there is nothing in the record to indicate that Chameleon either understands or can be expected to meet the burden of licensees to be forthcoming in their dealings with the Commission and to comply with its rules and policies." ID at para. 38. In light of these findings and the egregious nature of Chameleon's misconduct, the Initial Decision correctly concluded that revocation of the license for KFCC is mandated.

Conclusion

8. Accordingly, in light of the above, the Bureau urges the Commission to deny Chameleon's exceptions and to affirm the Initial Decision's revocation of the license of Chameleon for KFCC(AM).


Respectfully submitted,
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November 19, 1997

CERTIFICATE OF SERVICE

Alan E. Aronowitz, an attorney in the Complaints & Political Programming Branch, Mass Media Bureau, certifies that he has on this 19th day of November 1997, sent by regular United States mail, one copy of the foregoing "**Mass Media Bureau's Reply to Exceptions**" to:

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Alan E. Aronowitz